

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GUY WILLIAM,

Plaintiff,

vs.

W. BAPTISTA, et al.,

Defendants.

No. C 12-06301 EJD (PR)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

Plaintiff, a state prisoner at Corcoran State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis will be granted in a separate written order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
 2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
 3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 5 elements: (1) that a right secured by the Constitution or laws of the United States was
 6 violated, and (2) that the alleged violation was committed by a person acting under the
 7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 While incarcerated at Pelican Bay State Prison, Plaintiff, a 70 year-old inmate,
 10 alleges that Defendants Baptista and Richcreek beat him after he exited the shower for no
 11 reason and he suffered injuries about his face, head and body. Liberally construed,
 12 Plaintiff's claim of excessive force is cognizable under § 1983 as a violation of the Eighth
 13 Amendment.

14 Plaintiff also alleges that Defendants Johnson and Pepiot refused to discipline or
 15 punish Baptista and Richcreek, though this fails to state a claim. Plaintiff states that
 16 Defendant Patterson verbally threatened him and Defendants Becker and Puget
 17 improperly denied his inmate appeals. The complaint will be dismissed with one
 18 opportunity to amend for Plaintiff to provide sufficient allegations against these
 19 Defendants. Failure to file an amended complaint will result in this action continuing
 20 only against Baptista and Richcreek. Any amended complaint must also contain the
 21 allegations against Baptista and Richcreek as it will replace the original complaint.

22 Plaintiff is informed that allegations of verbal harassment and abuse fail to state a
 23 claim cognizable under 42 U.S.C. § 1983. See Freeman v. Arpaio, 125 F.3d 732, 738
 24 (9th Cir. 1997) overruled in part on other grounds by Shakur v. Schriro, 514 F.3d 878,
 25 884-85 (9th Cir. 2008). With respect to the denial of his inmate appeals, there is no
 26 constitutional right to a prison administrative appeal or grievance system. See Ramirez v.
 27 Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
 28 1988).

1 **CONCLUSION**

2 For the foregoing reasons, the Court orders as follows:

3 1. All Defendants are dismissed, except Baptista and Richcreek, though Plaintiff
4 will be provided leave to amend, if he chooses. Within **twenty-eight (28) days** of the
5 date this order is filed, Plaintiff shall file an amended complaint using the court's form
6 complaint. The amended complaint must include the caption and civil case number used
7 in this order and the words "AMENDED COMPLAINT" on the first page and write in
8 the case number for this action, Case No. C 12-06301 EJD (PR). Plaintiff must answer
9 all the questions on the form in order for the action to proceed.

10 **Failure to respond in accordance with this order by filing an amended**
11 **complaint will result in the dismissal of all Defendants except Baptista and**
12 **Richcreek, and this case will continue only against them.**

13 The Clerk shall include two copies of the court's complaint with a copy of this
14 order to Plaintiff.

15
16 DATED: 3/7/2013


EDWARD J. DAVILA
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/8/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

Guy William
C53829
CSP-COR
P.O. Box 8800
Corcoran, CA 93212

DATED: 3/8/2013

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk